the incorporation of base plans in the orders. Base plans are instituted in order to level out production throughout the year so that adequate milk supplies are ensured during the short production months, while discouraging surplus supplies in the flush production months. The base plans also did have the effect of preventing producers not normally associated with a market from entering such market during the flush production months because they would have received the low, excess price for their milk. Nevertheless, the removal of base plans does not by itself necessitate amending the orders.

The orders currently have strict pooling requirements. For example, as was testified to at the reopened hearing by AMPI's spokesman, the pooling requirements for Order 7 specify that a producer's milk must be received at least 4 days at a pool plant to be eligible to be pooled during the months of December through June. Additionally, there is a 50 percent diversion limitation in Order 7 to nonpool plants for those same months. The Carolina and Tennessee Valley orders also have diversion limitations for cooperative associations during most months of 25 percent of the total quantity of producer milk. They also maintain pooling requirements specifying how many days a month producer milk must be received at pool plants. The Louisville-Lexington-Evansville order specifies a diversion limitation based upon the number of days that a producer's milk is diverted during a month. The evidence in this proceeding is insufficient to conclude that the current pooling standards will not recognize the seasonally varying needs for milk for fluid use. The creation of additional producer pooling standards is unnecessary and unwarranted on the basis of the record herein and, therefore, the proposal should be denied.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

Dated: July 17, 1997.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 97–19370 Filed 7–22–97; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545, 550 and 563e

[No. 97–68]

RIN 1550–AB09

Fiduciary Powers of Federal Savings Associations; Community Reinvestment Act

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to revise its fiduciary powers regulations in order to promote the more efficient operation and supervision of Federal savings associations' fiduciary activities. The proposed changes are intended to update, clarify, and streamline OTS regulations, to incorporate significant interpretive guidance, and to eliminate unnecessary regulatory burden. OTS proposes these revisions pursuant to the Regulatory Reinvention Initiative of the Vice President's National Performance Review (Reinvention Initiative) and section 303 of the Community Development and Regulatory Improvement Act of 1994 (CDRIA). OTS also proposes to amend its Community Reinvestment Act (CRA) regulations. The proposed change would bring the scope of OTS's CRA regulation into accord with the CRA regulations of the other federal banking agencies. It would exempt from the CRA regulations savings associations that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business.

DATES: Comments must be received on or before September 22, 1997.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, Attention Docket No. 97–68. These submissions may also be hand-delivered to 1700 G Street, N.W., from 9:00 A.M. to 5:00 P.M. on business days; sent by facsimile transmission to FAX Number (202) 906–7755; or sent by e-mail to public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments will be available for inspection at 1700 G Street, N.W., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Larry Clark, Senior Manager, Compliance and Trust Programs, Compliance Policy, (202) 906–5628; Timothy Leary, Counsel (Banking and Finance), (202) 906–7170, or Karen Osterloh, Assistant Chief Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

II. Background

In 1995, pursuant to the Reinvention Initiative and section 303 of CDRIA, OTS conducted a comprehensive review of its rules and regulations. As part of that review, OTS identified its trust regulations at 12 CFR Part 550 for updating and streamlining.

Part 550 is promulgated under Section 5(n) of the Home Owners' Loan Act (HOLA), 12 U.S.C. 1464(n), which authorizes the Director of OTS to authorize a Federal savings association to exercise fiduciary powers. Congress enacted section 5(n) in order to give Federal savings associations the ''ability to offer trust services on the same basis as national banks'' and to ''enhance the ability of thrifts to offer complete financial service to the consumer.''[1]

As originally enacted, section 5(n) of the HOLA empowered the Federal Home Loan Bank Board (FHLBB), the predecessor agency to OTS, to issue regulations regarding the proper exercise of Federal association trust powers.[2] Pursuant to that authority, the FHLBB issued the current part 550 in December, 1980.[3] These regulations have not been substantially changed since their promulgation.

Since 1980, however, much about Federal savings associations' fiduciary business has changed. These changes have affected the nature and scope of the fiduciary services that associations offer, and the structures and operational methods that associations use to deliver those services. OTS's primary goals in revising part 550 are to accommodate these changes, remove unnecessary regulatory burden, and facilitate the continued development of Federal

[1] S. Rep. 96–368 at 13 (1980), reprinted in 1980 U.S.C.C.A.N. 248. Congress further amended § 5(n) in the Financial Institutions Reform, Recovery and Enforcement Act (''FIRREA'') of 1989. Pub. L. 101–73.

[2] 12 U.S.C. 1464(n)(10)(D)(1980).

[3] 45 FR 82162 (December 15, 1980).

savings associations' fiduciary business consistent with safe and sound banking practices.

Today's proposal has several themes. First, the proposal recognizes that the geographic and organizational structure of many Federal savings associations' fiduciary operations has changed considerably over the years. Consequently, OTS proposes to adjust part 550 so that its requirements are workable for both large, multi-state fiduciary organizations and small institutions that conduct fiduciary activities primarily on a local basis.

Second, Federal savings associations' fiduciary activities, in several respects, are subject to State law. In some cases, OTS has the flexibility to prescribe a uniform Federal standard or to direct Federal savings associations to follow State law. In the proposal, OTS has attempted to strike an appropriate balance between Federal and State law.

Third, over the years, part 550 has been interpreted to apply to investment advisory activities and related services which do not involve the association's exercise of investment discretion. In some cases, savings associations engaged in these activities operate under different standards than other financial service providers that conduct the same business.

Finally, consistent with section 303 of CDRIA, the proposal conforms OTS rules more closely to those rules of other Federal banking agencies, specifically the rules issued by the Office of the Comptroller of the Currency (OCC) at 12 CFR Part 9. Section 5(n) of the HOLA closely resembles 12 U.S.C. 92a, which authorizes the OCC to grant fiduciary powers to national banks. In December 1996, the OCC comprehensively revised its rules governing national banks' fiduciary operations. 61 FR 68543 (December 30, 1996). To promote continuity and reasonable consistency in the exercise of fiduciary powers by Federally-chartered financial institutions, OTS's proposal draws extensively on the OCC's final rule and the comments the OCC received on its proposed rule. As a consequence, today's proposal more accurately reflects current legal, regulatory, and business developments in the area of fiduciary services and activities.

II. Section-by-Section Description of the Proposal

Proposed § 550.1 (Authority and Scope)

Proposed § 550.1 is a new provision. It explicitly states the statutory authority for, and the purpose and scope of, part 550.

Proposed § 550.2 (Definitions)

The proposal moves the definitions currently found at § 550.1 to proposed § 550.2. Some definitions are removed and others are added. Significant changes are highlighted below.

Affiliate

The proposal adds a definition of ''affiliate'' to part 550. The proposed definition follows the OCC's fiduciary powers regulation by cross referencing the definition in the Federal Reserve Act at 12 U.S.C. 221a(b). That definition varies from OTS's current default definition of ''affiliate'' found at 12 CFR 561.4. Specifically, the Federal Reserve Act definition includes holding companies as affiliates, whereas OTS's standard definition does not. To reflect the variety of corporate structures through which Federal savings associations exercise their fiduciary powers, and to promote regulatory consistency with the OCC's new Rule 9, OTS proposes to adopt the Federal Reserve Act definition of ''affiliate.''

Applicable Law

The term ''local law'' is used throughout existing part 550. Currently, § 550.1(g) defines local law as the law of the State or other jurisdiction governing the fiduciary relationship. The proposal would replace the term ''local law'' with ''applicable law.'' This change would clarify that the legal authority governing a Federal savings association's fiduciary relationships may include Federal law and regulations governing fiduciary relationships, State laws governing these relationships, the terms of the instrument governing a fiduciary relationship, and any court order pertaining to the relationship.[4] Applicable law would not incorporate any State law or other body of authority that would not otherwise apply to a Federal savings association's fiduciary activities, such as licensing, examination, access to examination reports, and other matters left to Federal law under this regulation.

Recently, a number of savings associations have asked OTS about how State law applies to their exercise of fiduciary powers, including when those fiduciary powers are exercised in an operating subsidiary or other subsidiary. Section 5(n) of the HOLA recognizes a specific role for State law in Federal savings associations' exercise of fiduciary powers, unlike other operations of Federal savings associations.

In a recent legal opinion, OTS determined that State law applies to Federal savings associations' fiduciary activities to the extent specifically provided by section 5(n) of the HOLA. This includes the scope of those powers (§ 5(n)(1)), capitalization requirements (§ 5(n)(2)), the deposit of securities with State authorities (§ 5(n)(5)), and provision of an oath or affidavit from trust fiduciaries (§ 5(n)(6)).[5] OTS requests comment on the scope of federal preemption for Federal savings associations and their subsidiaries in dealing with other State law requirements in this area.

Fiduciary Capacity

Under existing § 550.1(c), fiduciary means ''a Federal savings association undertaking to act alone, through an affiliate, or jointly with others primarily for the benefit of another in all matters connected with its undertaking.'' The current definition also lists the specific fiduciary capacities enumerated in section 5(n) of the HOLA (trustee, executor, administrator, guardian) and several other fiduciary capacities in which State banks, trust companies, or other corporations competing with Federal savings corporations are permitted to act under State law (receiver, managing agent, registrar of stocks and bonds, escrow, transfer, or paying agent, and trustee of employee pension, welfare, and profit sharing trust).

Under the proposal, the term ''fiduciary capacity'' would replace ''fiduciary.'' The proposed definition of ''fiduciary capacity'' attempts to establish a clear, objective boundary for the coverage of Part 550 while retaining the traditional core concept that serving in a fiduciary capacity involves acting on another's behalf. Under the proposed definition, fiduciary capacity includes specific fiduciary activities, such as acting as trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gift to minors act. In addition, fiduciary capacity would include any capacity in which the association possesses investment discretion on behalf of another, and any other similar capacity that OTS authorizes under 12 U.S.C. 1464(n).

[4] Relevant Federal law includes the HOLA (12 U.S.C. 1461 *et seq.*), the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 *et seq.*), the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), the Investment Advisor's Act of 1940 (15 U.S.C. 80b–1 *et seq.*), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*), the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*), and rules issued pursuant to those acts.

[5] OTS Op. Chief Counsel (March 28, 1996) at 8–9.

The proposed definition also includes a Federal savings association that acts as an investment advisor for a fee, even though the association may not act in any traditional fiduciary capacity or exercise investment discretion.[6] This provision recognizes that when a customer pays a fee in return for investment advice, whether or not the customer follows that advice, the customer has a reasonable expectation of receiving advice that is free of conflicts of interest. It is also consistent with other Federal statutes that provide enhanced protection to customers of certain investment advisers who receive a fee.[7]

On July 9, 1997, the OCC proposed to issue an interpretive ruling codifying a recent interpretive letter that clarified how the OCC intends to apply the term ''acting as an investment adviser for a fee.''[8] The OCC interprets the term ''investment adviser'' to generally mean a national bank that provides advice or recommendations concerning the purchase or sale of specific securities, such as a national bank engaged in portfolio advisory and management activities (including acting as investment adviser to a mutual fund). The qualifying phrase ''if the bank receives a fee for its investment advice'' excludes those activities in which the investment advice is merely incidental to other services.

Under the OCC interpretation, a national bank that engages in full-service brokerage activities may provide investment advice for a fee, depending upon the commission structure and the specific facts. The OCC will consider full-service brokerage to involve investment advice for a fee if a non-bank broker engaged in that activity is considered an investment adviser under the Investment Advisers Act of 1940.[9]

The OCC also has indicated that certain activities generally will not entail providing investment advice for a fee. These include financial advice and counseling, including strategic planning of a financial nature, merger and acquisition advisory services, advisory and structuring services related to project finance transactions, and providing market economic information to customers in general; client-directed investment activities where the fee does not depend on the provision of investment advice; investment advice incidental to acting as a municipal securities dealer; real estate asset management; real estate consulting; advice concerning bridge loans; services for homeowners' associations; tax planning and structuring advice; and investment advice authorized the OCC under 12 U.S.C. 24 (Seventh) as an incidental power necessary to carry on the business of banking.

OTS agrees with the OCC's interpretation and intends to apply it when determining whether a Federal savings association is acting as an ''investment adviser.'' OTS invites comment on the OCC interpretation and whether similar language should be incorporated into the OTS final rule or guidance.

The OCC, in its December, 1996 revisions to Part 9, considered relying on State law as an alternative dividing line between fiduciary and non-fiduciary investment advisory activities. Under a State law approach, for example, part 550 would apply to an association's investment advisory activity if that activity, when engaged in by competing State fiduciaries, would require State authorization and would be regulated as a fiduciary activity under State law.

While the OCC rejected this approach in its final rule, OTS invites comment on this and other alternative approaches to defining which investment advisory activities to include within the definition of fiduciary capacity.

The adoption of any approach that excludes some types of investment advisory activities from coverage under part 550 raises the question of how to oversee ''non-fiduciary'' investment advisory activities. Some of these activities already are subject to the Interagency Statement on Retail Sales of Non-deposit Investment Products (February 14, 1994),[10] and the anti-fraud provisions of the Securities Exchange Act of 1934.[11] A Federal savings association also must conduct all its activities, including its investment advisory activities, in a manner consistent with safe and sound banking practices.

Finally, OTS notes that employees of banks who engage in certain securities transactions for customers are subject to various recordkeeping and confirmation regulations.[12] OTS is considering whether to issue a separate proposed rulemaking adopting similar rules for employees of savings associations who engage in non-fiduciary investment advisory services. As such, OTS invites comment on whether such requirements should be considered in a future rulemaking.

Fiduciary Officers and Employees

Existing part 550 uses the term ''trust department'' to refer to the group of employees that are assigned fiduciary responsibilities. The proposal replaces this term with the term ''fiduciary officers and employees.'' This proposed change reflects the increasing diffusion of fiduciary functions throughout a Federal savings association.

Fiduciary Powers

The proposed definition of ''fiduciary powers'' in § 550.2 specifies that the scope of a Federal savings association's fiduciary powers depends upon the power that the State in which the Federal savings association is located grants to competing fiduciaries. *See* 12 U.S.C. 1464(n)(1). This is consistent with the OCC's definition of fiduciary powers for national banks in new § 9.2(g).

Under OTS's current regulations and past interpretive opinions, a federal thrift is located, for trust purposes, in each State where it operates a trust office.[13] A trust office may be the association's home office, any branch office, any agency office, or alternatively, a fiduciary presence within a State that is the functional equivalent of operating a brick and mortar trust office—a so-called *de facto* trust office.[14] Thus, a Federal savings

[6] Part 550 continues to apply to associations acting in the enumerated fiduciary capacities (*e.g.*, trustee) even though the association has no investment discretion and receives no fee for investment advice. OTS notes, however, that a Federal savings association that acts as trustee of certain stock bonus, pension or profit sharing plans, IRAs, and fiduciary accounts with no active fiduciary duties may be exempted from part 550 under proposed § 550.3.

[7] *See e.g.*, 29 U.S.C. 1002(21)(A) (fiduciaries of ERISA accounts); 15 U.S.C. 80b–2(a)(11) (Investment Advisers Act, which generally applies to any person who, for compensation, engages in the business of advising others. Although banks are exempt from the Investment Advisers Act, Federal savings associations are not, and investment advisers employed by Federal savings associations must therefore register with the SEC).

[8] 62 FR 36746 (July 9, 1997), codifying Interpretive Letter No. 769 (January 28, 1997).

[9] 15 U.S.C. 80b–1, *et seq.*

[10] The four Federal banking agencies have issued a clarification of the Interagency Statement. *See* Joint Interpretation of the Interagency Statement on Retail Sales of Nondeposit Investment Products (Sept. 12, 1995).

[11] *See, e.g.*, 15 U.S.C. 78i (manipulation of securities prices), 78j (manipulative and deceptive practices), 78r (liability for misleading statements), 78z (unlawful representations).

[12] 12 CFR Part 12 (OCC); 12 CFR 208.8(k) (FRB); 12 CFR Part 344 (FDIC). These rules are currently being revised by the Federal banking agencies.

[13] 12 CFR 550.2(c)(2); OTS Op. Chief Counsel (June 21, 1996).

[14] OTS Op. Chief Counsel (March 28, 1996). Conversely, OTS has found that an association will not be ''located'' in states in which it only markets its trust services (OTS Op. Chief Counsel (June 21, 1996)), or performs certain activities incidental to serving as a testamentary trustee or a trustee holding real estate. (OTS Op. Chief Counsel (August 8, 1996). The interpretive letters reaching these conclusions were each based on a specific, detailed

Continued

association may provide trust services from office located in more than one State.[15]

Investment Discretion

As discussed above, fiduciary capacity would include any capacity in which the association possesses investment discretion on behalf of another. With respect to an account, ''investment discretion'' is defined as the authority ''to determine what securities or other assets to purchase or sell on behalf of the account.'' This term would apply whether the investment discretion is sole or shared. Moreover, a savings association would have investment discretion where it receives delegated authority over investments and where it delegates this authority to another.

Proposed § 550.3 (Exempt Activities)

Currently, OTS approval under part 550 is not required for a Federal savings association to act as trustee or custodian of certain trusts and accounts. *See* 12 CFR 545.102. Under this provision, a savings association may act as a trustee or custodian of an Individual Retirement Account or a Keogh account, including self directed accounts. The association may also act as a trustee with no active fiduciary duties, if applicable law authorizes it to act in that capacity. Under this provision, however, the association may invest the funds of the trust or account only: (1) in the association's own accounts, deposits, obligations or securities, or (2) in such other assets as the customer may direct, provided that the association does not exercise any investment discretion or provide any investment advice with respect to the trust or account assets. Section 545.102 further requires the Federal savings association to observe principles of sound trust administration, including those relating to recordkeeping and segregation of assets, and requires the association to make certain specific disclosures.

In order to more efficiently organize OTS's fiduciary regulations and to clarify when applications for fiduciary powers are required, the proposal would move current 12 CFR 545.102, with slight modifications, to new § 550.3.

Proposed § 550.4 (Approval Requirements)

Proposed § 550.4 would clarify and streamline the requirements governing applications for fiduciary powers. The current requirements are found at § 550.2.

Proposed § 550.5 (Administration of Fiduciary Powers)

Proposed § 550.5 would govern the administration of fiduciary powers. Paragraph (a) of the proposal would continue to place the primary responsibility for the proper exercise of a Federal savings association's fiduciary activities on its board of directors. The board may continue to assign functions related to the exercise of fiduciary powers to any director, officer, employee, or to a committee of directors, officers or employees. *Compare* existing § 550.5(a)(1).

Paragraph (b) would address the use of personnel and facilities. Under this provision, a Federal savings association may use its personnel and facilities to perform services related to the exercise of its fiduciary powers. Moreover, any department of the association may use fiduciary officers, employees, and facilities to perform services unrelated to the exercise of fiduciary powers, to the extent not prohibited by applicable law. *See* existing § 550.5(b). The proposed rule would also permit a Federal savings association to use the facilities of an affiliate to perform services related to its fiduciary activities, and allow an affiliate to use fiduciary officers, employees, and facilities to perform services unrelated to the exercise of fiduciary powers. Such authority does not, of course, restrict OTS's ability to impose conditions on a Federal savings association's relationship with its affiliates.

Proposed § 550.5(c) is a new provision addressing agency agreements. This provision would clarify that a Federal savings association may enter into a written agency agreement with another entity to purchase or sell services related to the exercise of fiduciary powers. This provision provides Federal savings associations with greater flexibility and is consistent with recent agency guidance.[16] As with an association's relationships with its affiliates, this provision does not restrict OTS's ability to impose conditions on an association's agency agreements. Finally, proposed paragraph (d) retains the existing requirement that all fiduciary officers and employees must be adequately bonded. *See* existing § 550.5(e).

Proposed § 550.6 (General Standards for the Exercise of Fiduciary Powers)

Proposed § 550.6 sets out general standards that a Federal savings associations must meet in exercising its fiduciary powers. The proposal specifies that a Federal savings associations must exercise its fiduciary powers prudently and in compliance with applicable law. Proposed § 550.6 further specifies that a Federal savings association must use standards in exercising its fiduciary powers that are consistent with safety and soundness, promote sound fiduciary administration, and enable the association to monitor the conditions of its fiduciary operations. The standards should also take into account an association's size, the nature and scope of its fiduciary operations, and the conditions in the market in which it exercises fiduciary powers.

In its recent revisions of its fiduciary powers regulation, the OCC included a provision, 12 CFR 9.5, requiring national banks to maintain and follow written policies and procedures in certain areas. Several of those areas, such as brokerage placement practices, the use of material inside information when buying or selling securities, the selection and retention of readily available legal counsel, and the investment of funds held as fiduciary, were drawn from various existing sections of the OCC's prior fiduciary powers regulation. The new final OCC rule gathered those separate requirements into one section, and added a requirement that national banks adopt and follow written policies and procedures addressing methods for preventing self-dealing and conflicts of interest.

After consideration, OTS has decided not to specifically require written policies and procedures in its regulation. Adopting a provision similar to 12 CFR 9.5 would require Federal savings associations to adopt and follow written policies and procedures in four areas not found in current Part 550: brokerage placement services, methods for preventing self-dealing and conflicts of interest, selection and retention of readily available legal counsel, and the investment of funds held as fiduciary. Proposing similar requirements for Federal savings associations would impose an additional regulatory burden by expanding the areas in which Federal savings associations must maintain and follow written policies and procedures.

OTS has opted for a less rigid approach that will still require associations to exercise their fiduciary

set of facts. An institution interested in conducting such operations should carefully consult those letters and its trust counsel, and discuss its proposed business plan with the appropriate OTS regional office.

[15] OTS Op. Chief Counsel (December 24, 1992). *See also* 12 CFR 556.5 (authorizing Federal savings association to expand their branch operations nationwide).

[16] Op. Chief Counsel, Office of Thrift Supervision (November 22, 1995).

powers prudently and in compliance with applicable law. We believe this is consistent with the intent of section 2242 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996, 110 Stat. 3009–418, which amended section 303(a) of the CDRIA, 12 U.S.C. 4803(a), by requiring each Federal banking agency to ''review the extent to which existing regulations require insured depository institutions . . . to produce unnecessary internal written policies and eliminate such requirements, where appropriate.''

The only provision in current Part 550 relating to written policies and procedures is current § 550.5(c), which requires a Federal savings association to adopt and follow written policies and procedures to ensure compliance with the Federal securities laws. That section further specifies that those policies and procedures should ensure that fiduciary departments not use material inside information in connection with the sale or purchase of securities.[17]

By deleting current § 550.5(c), OTS does not intend to remove the requirement that Federal savings associations comply with the Federal securities laws. In this regard, proposed § 550.6 states that a Federal savings association must exercise its fiduciary powers ''in compliance with applicable law.'' As noted above, the term ''applicable law'' includes all the relevant Federal securities laws. Federal savings associations may find that adapting written policies and procedures will enhance their ability to comply with applicable laws and operate prudently.

Federal savings associations can find additional guidance regarding standards for the exercise of fiduciary powers in Section 210 of the Trust Activities Handbook. Section 210 discusses the advantages of maintaining and following written policies and procedures and provides illustrative examples of the areas those policies and procedures should cover. Those examples include conflicts of interest, asset and account administration, operations, personnel, and business development and profitability. *See* Trust Activities Handbook at 97–98.

Proposed § 550.7 (Review of Assets of Fiduciary Accounts)

Currently, § 550.5(a)(2) addresses the review of assets contained in fiduciary accounts. Proposed § 550.7 incorporates the requirements of this existing regulation, but reorganizes, clarifies and streamlines the text.

Under the proposed rule, a Federal savings association must conduct three types of reviews of fiduciary accounts—a pre-acceptance review, an initial post-acceptance review, and an annual review. In a pre-acceptance review, an association must review a prospective account prior to its acceptance to determine whether the association can properly administer the account. In the initial post-acceptance review, an association must conduct a prompt review of all assets of a fiduciary account for which it has investment discretion to evaluate whether the assets are appropriate for the account. At least once during every calendar year thereafter, the association must conduct a similar review of assets of each fiduciary account for which it has investment discretion.

Existing § 550.5(a)(2) requires that each annual review must occur within 15 months of the prior annual review. OTS believes that this requirement is too rigid, raises timing issues, and may not contribute to safety and soundness. Accordingly, the OTS proposal does not retain this requirement.

Proposed § 550.8 (Recordkeeping)

Under proposed § 550.8, a Federal savings association would be required to maintain adequate records for all fiduciary accounts (including adequate documentation of the establishment and termination of each fiduciary account)[18] for all fiduciary accounts for a specified period, and ensure that fiduciary records are kept separate and distinct from other records of the association. These requirements implement section 5(n)(2) of the HOLA and reflect the substance of existing §§ 550.5(a)(2) and 550.6.

Under existing § 550.6, a Federal savings association must retain fiduciary records ''for such time as to enable the Federal savings association to furnish such information or reports with respect thereto as may be required by the [OTS].'' By contrast, the proposed rule would require an association to retain fiduciary records for three years from the later of the termination of the account or termination of litigation relating to the account. OTS believes that the proposed three-year retention period is easier to apply and understand.

Proposed § 550.9 (Audit of Fiduciary Activities)

Under existing § 550.7, a Federal savings association must perform a suitable annual audit of its fiduciary operations. Proposed § 550.9 retains the substance of this section with certain clarifications of current OTS policy.

Proposed § 550.9(a) requires the association to conduct a suitable audit of all significant fiduciary activities at least once during each calendar year and to report the results of the audit (including all significant actions taken as a result of the audit) in the minutes of the board of directors. The proposal clarifies that the audit requirement applies to all significant fiduciary activities. Thus, an association would not be required to audit *de minimis* activities. OTS intends the *de minimis* standard to apply in very limited circumstances, such as where an association has only one small account under a particular fiduciary activity.

Paragraph (b) of the proposed rule clarifies that the required audit program may be implemented either through an annual or a continuous audit.[19] Under a continuous audit system, the association may perform discrete audits of specific activities at intervals appropriate for the nature and risk of that activity. For example, an association may determine that it is appropriate to audit certain low-risk fiduciary activities every 18 months. An association that adopts a continuous audit system must report the results of any discrete audits performed since the last audit report (including all actions taken as a result of the audits) in the minutes of the board of directors at least once during each calendar year.

The proposed audit standards at § 550.9(c) restate the existing requirements in § 550.7. This paragraph provides that an audit must ascertain whether the association's internal control policies and procedures provide reasonable assurance that fiduciary activities are administered in accordance with applicable law, fiduciary assets are properly safeguarded, and transactions are accurately recorded in the appropriate accounts in a timely manner. In addition, proposed paragraph (c) requires audits to be conducted in accordance with generally accepted standards for attestation engagements (and other standards established by OTS). An audit may be conducted by

[17] The current 12 CFR 9.5 requires that a national bank adopt and follow written policies and procedures only in preventing the use of inside information, not the broader requirement in current § 550.5(c) that those policies and procedures more generally ensure compliance with the federal securities laws.

[18] The adequacy of an association's records may be determined only on a case-by-case basis. Section 5(n)(2) of the HOLA, however, provides some guidance. It requires the association to maintain a separate set of books and records ''showing in proper detail all transactions. . . .''

[19] This change is consistent with current OTS policy. *See* Trust Activities Regulatory Handbook (1992) at 142.

external or internal auditors, or other qualified persons who are responsible only to the association's board of directors.

All audits, whether annual or continuous, must be performed under the direction of the association's fiduciary audit committee. Under the proposed rule, the audit committee may consist of a committee of the association's directors or an audit committee of an affiliate of the association. By contrast, the current rule does not expressly permit an audit committee of an affiliate to conduct audits. *Compare* existing § 550.7(a).

The proposed change will allow a savings and loan holding company to audit the fiduciary activities of its subsidiary Federal savings association through a central audit committee. This will facilitate the consolidation of functions within a holding company structure. Even where the audit is performed under the direction of an affiliate's audit committee, the Federal savings association's board of directors is still ultimately responsible for the association's fiduciary activities. *See* proposed § 550.5(a).

Existing § 550.7(a) requires the audit committee to be independent of management. The proposal provides guidance regarding the independence of the audit committee. Specifically, proposed § 550.9(d) states that the audit committee may not include any officers of the association or an affiliate who participate significantly in the administration of the association's fiduciary activities. Additionally, a majority of the members of the audit committee may not also be members of a committee to which the board of directors has delegated power to manage and control the fiduciary activities of the association.

OTS invites comment on the relationship between the audit requirement and OTS's fiduciary examination process. In particular, commenters should address the extent to which OTS examiners should rely on an association's internal or external fiduciary audits.

Proposed § 550.10 (Fiduciary Funds Awaiting Investment or Distribution)

Under current § 550.8(a), a Federal savings association may not allow fiduciary funds to remain uninvested and undistributed any longer than reasonable for proper account management. Proposed § 550.10(a) clarifies this requirement in two ways. First, the proposal explicitly recognizes that applicable law may limit the amount of time that funds may remain uninvested. Second, it clarifies that the prohibition applies only to fiduciary accounts over which the association has investment discretion or discretion over distributions.

With respect to a fiduciary account for which a Federal savings association has investment discretion, proposed § 550.10(a) requires the association to obtain a rate of return for funds awaiting investment or distribution that is consistent with applicable law. This provision prescribes a uniform policy for the investment of all idle funds and recognizes the role that applicable law may play in prescribing standards in this area. *Compare* existing § 550.8(b)(3) (funds waiting investment or distribution ''shall be made productive.'')

Proposed § 550.10(b) addresses self deposits. Like the existing regulation at § 550.8(b), the proposed rule permits a Federal savings association to deposit fiduciary funds awaiting investment or distribution in other departments of the Federal savings association, unless the deposit is prohibited by applicable law. To the extent that funds are not FDIC-insured, the association would be required to secure the deposit with collateral.

Under the existing rule, acceptable collateral includes direct obligations of the United States, other fully guaranteed obligations of the United States, readily marketable securities of the classes in which State-chartered corporate fiduciaries may invest under State law, and other readily marketable securities as OTS may determine.

The proposal would add two new classes of acceptable collateral for self-deposits—assets that qualify under State law as appropriate security for deposits of fiduciary funds and surety bonds unless they are prohibited by applicable law. OTS believes that a surety bond is comparable to other forms of security permitted as collateral for self-deposits. OTS believes that this interpretation will promote the interests of beneficiaries while ensuring that Federal savings associations are not disadvantaged in States that permit state-chartered institutions to secure deposits of idle fiduciary funds with surety bonds. OTS is considering whether to adopt a uniform national standard that would allow Federal savings associations to use surety bonds as collateral, without regard to State prohibitions. OTS invites public comment on this issue.

The proposed rule includes a new provision at § 550.10(c) which addresses the deposit of idle fiduciary funds with affiliates. Section 5(n)(3) of the HOLA authorizes a Federal savings association to pledge assets to secure self deposits of fiduciary funds. This provision, thus, accommodates an association with a trust department and a savings department, the organizational structure prevalent in 1980. However, the statutory language does not address the evolution of Federal savings association organizational structures in recent years.

Today, some Federal savings associations do not operate departments that accept deposits of idle fiduciary funds. In some cases, however, these associations may be affiliated with other depository institutions that will accept such deposits. Other Federal savings associations operate as part of a large system of affiliated financial institutions and wish, for reasons of efficiency, to consolidate their fiduciary payment and disbursement functions in a single entity.

In these situations, a Federal savings association may wish to deposit idle fiduciary funds with an affiliated entity.

Consequently, OTS proposes to allow a Federal savings association to deposit idle fiduciary funds with an affiliate, if not prohibited by applicable law. A Federal savings association must set aside acceptable collateral, as described above, as security for a deposit by or with an affiliate, unless prohibited by applicable law. This change is consistent with the position taken in OCC's revised part 9, and should facilitate more efficient fiduciary operations in multi-entity holding companies.

Proposed § 550.11 (Investment of Fiduciary Funds)

Proposed § 550.11 simply directs a Federal savings association to invest funds in a fiduciary account in a manner consistent with applicable law. This section condenses the existing provisions on the investment of fiduciary funds without any change in substance. *Compare* existing § 550.9.

Proposed § 550.12 (Collective Investment Funds)

Proposed § 550.12 governs the establishment and operation of common trust funds and other collective investment funds by Federal savings associations. Common trust funds maintained for the investment and reinvestment of funds held in a fiduciary capacity may be exempted from taxation under section 584 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 584). Section 584 requires the funds to meet the standards for collective investment under the OCC's regulations (12 CFR 9.18), regardless of the identity of the financial institution fiduciary. Thus, Federal savings associations maintaining section

584 common trust funds are bound by the OCC regulations.

Accordingly, the proposed rule requires Federal savings associations to observe the requirements of 12 CFR 9.18 in administering any common fund. *Compare* existing § 550.13(b). In its recent rulemaking, the OCC promulgated various rule changes designed to lift unnecessary regulatory burdens on institutions that administer collective investment funds, while preserving appropriate protections to beneficiaries (and other interested parties). The OTS proposed rule continues to cross-reference the OCC regulation, as recently amended.

Proposed § 550.13 (Self-dealing and Conflicts of Interest)

Proposed § 550.13 addresses self-dealing and conflicts of interest. This section retains much of the substance of existing § 550.10.

Unless authorized by applicable law, proposed § 550.13(a)(1) would prohibit a Federal savings association from investing funds in stocks or obligations of, or assets acquired from, the association or any of its directors, officers or employees; affiliates of the association or any of their directors, officers or employees; or individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the association. The proposed rule would clarify that the general prohibition against self-dealing and conflicts of interests only applies to those fiduciary accounts for which the Federal savings association has investment discretion. Proposed § 550.13(a)(2) specifically sets forth the conditions under which a Federal savings association may exercise the right to purchase additional stock or fractional shares of stock.

Proposed § 550.13(b) restates the existing prohibitions against loans, sales or other transfers from fiduciary accounts. *See* existing § 550.10(b). Under the proposal, a Federal savings association may not lend, sell, or otherwise transfer assets held in a fiduciary account for which the association has investment discretion to the association or any of its directors, officers, or employees; to affiliates of the association or any of their directors, officers, or employees; or to individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the association. Proposed § 550.13(b)(1)(i) through (iv) retain the existing exceptions to this general prohibition, with one clarification. Section 5(n)(7) of the HOLA prohibits a Federal savings association from lending funds held in fiduciary accounts to its directors, officers, or employees. For ease of reference, proposed § 550.13(b)(2) restates this statutory prohibition.[20]

Finally, consistent with current § 550.10(d), the proposed rule would permit a Federal savings association to make loans to fiduciary accounts, sell assets between fiduciary accounts and make loans between fiduciary accounts. *See* proposed §§ 550.13(c), (d) and (e). Such loans and sales would be permitted if the transactions are fair to the fiduciary accounts and are not prohibited by applicable law.

Proposed § 550.14 (Custody of Fiduciary Funds)

Proposed § 550.14 retains the substance of existing § 550.11, which addresses custody of fiduciary assets. The proposal continues to require the association to place assets of fiduciary accounts in the joint custody or control of not fewer than two fiduciary officers or employees. The proposal also continues to allow a Federal savings association to maintain fiduciary assets off-premises, if consistent with applicable law. Consistent with section 5(n)(2) of the HOLA, a Federal savings association must keep fiduciary assets separate from the assets of the association. Further, the proposed rule would require the association to keep assets in each fiduciary account separate from all other accounts or to identify the investments as the property of a particular account (except when assets are invested in collective investment funds).

Proposed § 550.15 (Deposit of Securities With State Authorities)

Under section 5(n)(5) of the HOLA and current § 550.4, whenever local law requires corporations acting as fiduciaries to deposit securities with State authorities for the protection of trust accounts, a Federal savings association must make a similar deposit before it can act in a fiduciary capacity.[21] Proposed § 550.15 restates this general requirement with two clarifications.

First, the proposed rule would require a deposit only if the laws of the state in which the Federal savings association is located require the deposit.[22] In addition, the current rule does not address how to calculate the required deposit when an association administers trust assets from offices located in more than one State. The current rule is unclear whether the association must compute the deposit based on the amount of trust assets held in the State or the amount of all trust assets.

Consistent with current agency guidance, the proposed rule does not require a Federal savings association with multi-state trust operations to compute the State deposit based on its nationwide trust assets. To do so would go far beyond the deposit requirement's purpose of protecting trust assets in a particular State, and would unnecessarily burden an association with multi-state fiduciary operations.[23] Accordingly, the proposed rule would permit a Federal savings association to calculate the deposit requirement in each State based on the amount of trust assets administered primarily from offices located in that State.

Proposed § 550.16 (Fiduciary Compensation)

Proposed § 550.16 retains the substance of current § 550.12, which addresses fiduciary compensation. Under the proposal, a Federal savings association may charge a reasonable fee for its fiduciary services if the amount of the compensation is not set or governed by applicable law. The proposal further prohibits an officer or an employee of a Federal savings association from retaining any compensation for acting as a co-fiduciary with the association in the administration of a fiduciary account, except with the specific approval of the board of directors. Finally, the proposal prohibits a Federal savings association from permitting a fiduciary officer or employee from accepting a bequest or gift of trust assets, unless the bequest or gift is directed or made by a relative of the officer or employee or is specifically approved by the association's board of directors.

Proposed § 550.17 (Receivership or Voluntary Liquidation)

The proposal retains the substance of current § 550.15, which addresses receivership and voluntary liquidation.

[20] The proposed rule permits an association to make these loans with respect to employee benefit plans in accordance with the exemptions found at section 408 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108). Section 408 specifically authorizes loans to participants and beneficiaries of such plans under certain circumstances. Under these exemptions, the association may make loans to directors, officers, or employees that are participants or beneficiaries in the association's own ERISA plan or in ERISA plans that the association administers for other employers.

[21] 12 U.S.C. 1464(n)(5).

[22] *See* Op. Chief Counsel, Office of Thrift Supervision (December 24, 1992) (concluding that a Federal savings association should compute the amount of a required State deposit based on the amount of trust assets administered from offices located in that State, rather than on the amount of its nationwide trust assets).

[23] *Id.*

Proposed § 550.17 directs a receiver, conservator, or liquidating agent of a Federal savings association to promptly close, or transfer to a substitute fiduciary, all fiduciary accounts, in accordance with OTS instructions and the orders of the court having jurisdiction.

Proposed § 550.18 (Surrender of Fiduciary Powers)

Proposed § 550.18 sets forth the procedures that apply when a Federal savings association seeks to surrender its fiduciary powers. Specifically, paragraph (a) requires a Federal savings association to file a certified copy of a resolution of its board of directors evidencing its intent to surrender its fiduciary powers. If, after an appropriate investigation, the Regional Director is satisfied that the Federal savings association has been discharged from all fiduciary duties, the Regional Director will notify the association that it is no longer authorized to exercise its fiduciary powers. *See* proposed § 550.18(b). The proposal incorporates the OTS practice of providing a written notice rather than a certificate that the association is no longer authorized to exercise trust powers. *Compare* existing § 550.14(b).

Existing § 550.14 states that upon surrender of fiduciary powers, a Federal savings association is no longer subject to part 550, cannot exercise fiduciary powers, and is entitled to return of any deposit with State authorities. Except for the return of the State deposit, OTS believes that these provisions are self-evident and unnecessary. Accordingly, the proposed rule does not include these provisions.

Proposed § 550.19 (Revocation of Fiduciary Powers)

Proposed § 550.19 sets forth standards and procedures for the revocation of fiduciary powers. This section retains the standards currently set forth in existing § 550.16(a), pursuant to which OTS may revoke fiduciary powers if the association has unlawfully or unsoundly exercised its fiduciary powers, has failed to exercise its fiduciary powers for five consecutive years, or has otherwise failed to comply with part 550.

Existing § 550.16(b) details the procedural requirements governing the revocation of fiduciary powers. This rule generally repeats the statutory requirements for a hearing contained in the HOLA. Because the requirements are already set out in the statute, proposed § 550.19(b) simply states that OTS revocation procedures are set forth at 12 U.S.C. 1464(n)(10) and that the hearing required under 12 U.S.C. 1464(n)(10)(B) will be conducted in accordance with 12 CFR Part 509 (OTS regulations governing administrative hearings).

III. Miscellaneous Fiduciary Powers Provisions

Consolidation or Merger

In its recent rulemaking, the OCC deleted, without discussion, its regulation dealing with the consolidation or merger of two or more national banks. OTS's regulation dealing with that situation is currently found at § 550.3. This provision states that when two or more Federal savings associations merge, and one of those associations is authorized to exercise fiduciary powers, the resulting association is also authorized to exercise fiduciary powers. No new application to exercise those powers is necessary. OTS believes that this proposition is self-evident and not likely to be the subject of dispute. Accordingly, the proposal does not contain a provision that corresponds to existing § 550.3.

Transfer Agents

Also in its recent rulemaking, the OCC adopted § 9.20, which specified that the rules adopted by the Securities and Exchange Commission (SEC) under section 17A of the Securities and Exchange Act of 1934 (1934 Act) (15 U.S.C. 78q–1, *et seq.*) apply to the domestic activities of national bank transfer agents. Those rules are found at 17 CFR 240.17Ac2–2 and 240.17Ad–1 through 16.

Section 17A(c) of the 1934 Act (15 U.S.C. 78q–1(c)) provides, *inter alia,* that transfer agents must register with their appropriate regulatory agencies. Under section 3(a)(34)(B) of the 1934 Act (15 U.S.C. 78c–3), the appropriate regulatory agency for banks is the OCC, the Board of Governors of the Federal Reserve Board, or the Federal Deposit Insurance Corporation.

The appropriate regulator for Federal savings association transfer agents, however, has always been the SEC. Thus, Federal savings association transfer agents are already subject to the SEC rules adopted under section 17A of the 1934 Act. Consequently, while a transfer agent is within the definition of fiduciary capacity for Federal savings associations, review of compliance with the SEC's registration and associated transfer agent rules and regulations lies with the SEC. Accordingly, the proposal does not include a provision that corresponds to § 9.20.

IV. Community Reinvestment Act Revisions

OTS also proposes to revise its regulations implementing the Community Reinvestment Act (CRA), located at 12 CFR Part 563e. Specifically, OTS proposes to amend § 563e.11(c), which outlines the scope of the CRA regulations.

Existing § 563e.11(c) provides that the CRA regulations apply to ''all savings associations as defined in * * * this chapter.'' By contrast, the CRA regulations of the other banking agencies exempt institutions that do not perform commercial or retail banking services.[24] These institutions, including trust companies, are not in the business of providing commercial or retail banking services by extending credit to the public in the ordinary course of business. Accordingly, they are not subject to CRA requirements.

Because there were no such institutions chartered as savings associations when § 563e.11(c) was adopted, OTS did not exclude them from the scope of the CRA regulations. Recently, however, some savings and loan holding companies have acquired or created savings associations that operate solely as trust companies, or that otherwise do not provide commercial or retail banking services by extending credit to the general public in the ordinary course of business. OTS anticipates that there may be similar institutions chartered in the future.

Accordingly, OTS proposes to amend § 563e.11(c) to clarify that part 563e is not intended to apply to savings associations that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incident to their specialized operations. The proposal includes several examples of such institutions, such as trust companies, clearing agents, correspondent associations, and companies that provide cash management controlled disbursement services.

V. Disposition of Existing Regulations

The following chart gives of an overview of the changes made to part 550.

[24] *See* 12 CFR 25.11(c) (OCC); 12 CFR 228.11(c) (FRB); 12 CFR 345.11(c) (FDIC).

Revised provision	Former provision	Comments
§ 550.1		Added.
§ 550.2.		
Affiliate		Added.
Applicable law	§ 550.1(g)	Significantly modified.
Custodian under a uniform gifts to minors act	§ 550.1(b)	Modified.
Fiduciary account	§ 550.1(a)	Modified.
Fiduciary capacity	§ 550.1(c) and (h)	Significantly modified.
Fiduciary officers and employees	§ 550.1(j)	Modified.
Fiduciary powers	§ 550.1(k)	Modified.
Guardian	§ 550.1(e)	Modified.
§ 550.3	§ 545.102	Modified and added.
§ 550.4	§ 550.2	Modified.
§ 550.5	§ 550.5(a)(1), (b) and (e)	Significantly modified.
§ 550.6		Added.
§ 550.7	§ 550.5(a)(2)	Significantly modified.
§ 550.8	§§ 550.5(a)(2) and 550.6	Significantly modified.
§ 550.9	§ 550.7	Significantly modified.
§ 550.10	§ 550.8	Significantly modified.
§ 550.11	§ 550.9	Significantly modified.
§ 550.12	§ 550.13	Modified.
§ 550.13	§ 550.10	Modified.
§ 550.14	§ 550.11	Modified.
§ 550.15	§ 550.4	Significantly modified.
§ 550.16	§ 550.12	Modified.
§ 550.17	§ 550.15	Modified.
§ 550.18	§ 550.14	Modified.
§ 550.19	§ 550.16	Modified.

VI. Reporting and Recordkeeping Requirements

OTS invites comment on:

Whether the proposed information collection contained in this proposal is necessary for the proper performance of OTS's functions, including whether the information has practical utility;

(1) The accuracy of OTS's estimate of the burden of the proposed information collection;

(2) Ways to enhance the quality, utility, and clarity of the information to be collected;

(3) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(4) Estimates of capital and start-up costs of operation, maintenance and purchases of services to provide information.

Respondents/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

The collection of information requirements contained in this proposal have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550–0037), Washington, DC 20503, with copies to the Regulations and Legislation Division (1550–0037), Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

The collection of information requirements in this proposed rule are found in 12 CFR 550.2, 550.8, 550.9, 550.12 and 550.18. OTS requires this information for the proper supervision of Federal savings associations' fiduciary activities. The likely respondents/recordkeepers are Federal savings associations.

Estimated average annual burden hours per respondent/recordkeeper: 10.5

Estimated number of respondents:

Applications for fiduciary powers: 13

Documentation and audit of fiduciary activities: 75

Surrender of fiduciary powers: 1

Estimated total annual reporting and recordkeeping burden: 155.5

Start up costs to respondents: 0

VII. Executive Order 12866

The Director of OTS has determined that this proposed rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

VIII. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that the proposed rule will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act of 1995.

IX. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposal liberalizes requirements and reduces burdens for Federal savings associations that exercise fiduciary powers, regardless of size. Accordingly, a regulatory flexibility analysis is not required.

List of Subjects

12 CFR Part 545

Accounting, Consumer Protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 550

Accounting, Reporting and recordkeeping requirements, Savings associations, Trusts and trustees.

12 CFR Part 563e

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

Accordingly, the Office of Thrift Supervision proposes to amend chapter V, title 12, Code of Federal Regulations, as set forth below.

PART 545—OPERATIONS

1. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

§ 545.102 [Removed]

2. Section 545.102 is removed.

3. Part 550 is revised to read as follows:

PART 550—FIDUCIARY POWERS OF FEDERAL SAVINGS ASSOCIATIONS

Sec.

Authority: 12 U.S.C. 1462a, 1463, 1464.

§ 550.1 Authority and scope.

This part is issued pursuant to 12 U.S.C. 1464(n). It sets forth the standards that apply to the fiduciary activities of Federal savings associations.

§ 550.2 Definitions.

For the purposes of this part:

Affiliate has the same meaning as in 12 U.S.C. 221a(b).

Applicable law means the law of a State or other jurisdiction governing a Federal savings association's fiduciary relationships, any applicable Federal law governing those relationships, the terms of the instrument governing a fiduciary relationship, or any court order pertaining to the relationship.

Custodian under a uniform gifts to minors act means a fiduciary relationship established pursuant to a State law substantially similar to the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act as published by the American Law Institute.

Fiduciary account means an account administered by a Federal savings association acting in a fiduciary capacity.

Fiduciary capacity means acting as a trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gifts to minors act; investment adviser, if the Federal savings association receives a fee for its investment advice; any capacity in which the Federal savings association possesses investment discretion on behalf of another; or any other similar capacity that OTS authorizes under 12 U.S.C. 1464(n).

Fiduciary officers and employees means all officers and employees of a Federal savings association to whom the board of directors or its designee has assigned functions involving the exercise of the association's fiduciary

Fiduciary powers means the authority that the OTS permits a Federal savings association to exercise pursuant to 12 U.S.C. 1464(n). The scope of the Federal savings association's fiduciary powers depends upon the powers that the State grants to competing fiduciaries in the State in which the Federal savings association is located.

Guardian means the guardian or conservator, by whatever name used by State law, of the estate of a minor, an incompetent person, an absent person, or a person over whose estate a court has taken jurisdiction, other than under bankruptcy or insolvency laws.

Investment discretion means, with respect to an account, the sole or shared authority (whether or not that authority is exercised) to determine what securities or other assets to purchase or sell on behalf of that account. A savings association that delegates its authority over investments or a savings association that receives delegated authority over investments are both deemed to have investment discretion.

§ 550.3 Exempt activities.

(a) *Activities exempted.* A Federal savings association is not subject to this part if it acts solely in the following fiduciary capacities:

(1) Trustee of a trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan qualifying for specific tax treatment under section 401(d) of the Internal Revenue Code of 1954 (26 U.S.C. 401(d));

(2) Trustee or custodian of a Individual Retirement Account within the meaning of section 408(a) of the Internal Revenue Code (26 U.S.C. 408(a)); or

(3) Trustee of a fiduciary account that involves no active fiduciary duties provided that the applicable law authorizes the savings association to act in this capacity.

(b) *Investment authority.* A Federal savings association acting in the fiduciary capacities listed in paragraph (a) of this section may invest the funds of the fiduciary account solely in the following instruments:

(1) The Federal savings association's accounts, deposits, obligations or securities; and

(2) Such other assets as the customer may direct, provided the Federal savings association does not exercise any investment discretion and does not directly or indirectly provide any investment advice with respect to the fiduciary account.

(c) *Administration.* A Federal savings association acting in the fiduciary capacities described in paragraph (a) of this section must observe principles of sound fiduciary administration, including those related to recordkeeping and segregation of assets.

(d) *Compensation.* A Federal savings association may receive reasonable compensation for acting in any fiduciary capacity authorized by this section.

(e) *Disclosure.* Unless fiduciary investments are limited to accounts or deposits insured by the FDIC, a Federal savings association acting in the capacities described in paragraph (a) of this section must include the following language in bold type on the first page of any contract documents:

Funds invested pursuant to this agreement are not insured by the Federal Deposit Insurance Corporation (''FDIC'') merely because the trustee or custodian is a Federal savings association the accounts of which are covered by such insurance. Only investments in the accounts of such a Federal savings association are insured by the FDIC, subject to its rules and regulations.

§ 550.4 Approval requirements.

(a) *OTS approval required.* A Federal savings association may not exercise fiduciary powers unless it obtains prior approval from the OTS under this

section. A Federal savings association may exercise only those fiduciary powers specified in the OTS approval. Unless otherwise provided in the approval, a Federal savings association may exercise fiduciary powers only from those offices listed in the application.

(b) *Application requirements.* A Federal savings association must file an application under § 516.1(c) of this chapter in order to exercise fiduciary powers through fiduciary officers and employees or through an affiliate. The application must describe the fiduciary powers that the Federal savings association or affiliate will exercise and include the additional information necessary to enable the OTS to make the determinations under paragraph (c) of this section.

(c) *Factors considered.* In reviewing an application filed under paragraph (b) of this section, the OTS will consider:

(1) The Federal savings association's financial condition;

(2) The Federal savings association's capital, and whether that capital is sufficient under the circumstances;

(3) The Federal savings association's overall performance;

(4) The fiduciary powers the Federal savings association proposes to exercise;

(5) Its proposed supervision of those powers;

(6) The availability of legal counsel;

(7) The needs of the community to be served; and

(8) Any other facts or circumstances that the OTS considers proper.

(d) *OTS action.* The Director may approve or disapprove any application filed under this section. The Regional Director is specifically authorized to approve or disapprove any application filed under this section that does not raise any significant issues of law or policy on which the OTS has not taken a formal position.

(e) *Conditions of approval.* The OTS may impose appropriate conditions to its approval of the application to ensure that the requirements of this part are met, or it may deny the application.

§ 550.5 Administration of fiduciary powers.

(a) *Responsibilities of the board of directors.* A Federal savings association's fiduciary activities must be managed by or under the direction of its board of directors. In discharging its responsibilities, the board may assign any function related to the exercise of fiduciary powers to any director, officer, employee, or committee of directors, officers or employees.

(b) *Use of personnel and facilities.* The Federal savings association may use any qualified personnel and facilities of the association or its affiliates to perform services related to the exercise of its fiduciary powers. Any department of the association or its affiliates may use fiduciary officers, employees, and facilities to perform services unrelated to the exercise of fiduciary powers, to the extent not prohibited by applicable law.

(c) *Agency agreements.* Pursuant to a written agreement, a Federal savings association exercising fiduciary powers may perform services related to the exercise of fiduciary powers for another association or other entity, and may purchase services related to the exercise of fiduciary powers from another association or other entity.

(d) *Bond requirement.* A Federal savings association must ensure that all fiduciary officers and employees are adequately bonded.

§ 550.6 General standards for the exercise of fiduciary powers.

Each Federal savings association must exercise its fiduciary powers prudently and in compliance with applicable law. Each Federal savings association must use standards in exercising its fiduciary powers that are consistent with safety and soundness, promote sound fiduciary administration, and enable the Federal savings association to adequately monitor the condition of its fiduciary operations. The standards should be appropriate for the size and condition of the Federal savings association, the nature and scope of its fiduciary operations, and the conditions in the market in which it exercises fiduciary powers.

§ 550.7 Review of assets of fiduciary accounts.

(a) *Pre-acceptance review.* Before accepting a fiduciary account, a Federal savings association must review the prospective account to determine whether it can properly administer the account.

(b) *Initial post-acceptance review.* Upon the acceptance of a fiduciary account for which a Federal savings association has investment discretion, the association must conduct a prompt review of all assets of the account to evaluate whether they are appropriate for the account.

(c) *Annual review.* At least once during every calendar year, a Federal savings association must conduct a review of all assets of each fiduciary account for which the association has investment discretion to evaluate whether they are appropriate, individually and collectively, for the account.

§ 550.8 Recordkeeping.

(a) *Documentation of accounts.* A Federal savings association must maintain adequate records for all fiduciary accounts. Adequate records include, but are not limited to, documentation of the establishment and termination of each fiduciary account.

(b) *Retention of records.* A Federal savings association must retain the records described in paragraph (a) of this section for a period of three years from the later of the termination of the account or the termination of any litigation relating to the account.

(c) *Separation of records.* A Federal savings association must ensure that the records described in paragraph (a) of this section are separate and distinct from other records of the association.

§ 550.9 Audit of fiduciary activities.

(a) *Annual audit.* At least once during each calendar year, a Federal savings association must arrange for a suitable audit of all significant fiduciary activities, under the direction of its fiduciary audit committee, unless the association adopts a continuous audit system in accordance with paragraph (b) of this section. The association must note the results of the audit (including significant actions taken as a result of the audit) in the minutes of the board of directors.

(b) *Continuous audit.* In lieu of performing annual audits under paragraph (a) of this section, a Federal savings association may adopt a continuous audit system under which the association arranges for a discrete audit of each significant fiduciary activity (i.e., on an activity-by-activity basis), under the direction of its fiduciary audit committee, at an interval commensurate with the nature and risk of that activity. Certain fiduciary activities may receive audits at intervals greater or less than one year, as appropriate. An association that adopts a continuous audit system must note the results of all discrete audits performed since the last audit report (including significant actions taken as a result of the audits) in the minutes of the board of directors at least once during each calendar year.

(c) *Audit standards.* (1) An audit must ascertain whether the association's internal control policies and procedures provide reasonable assurance that:

(i) Fiduciary activities are administered in accordance with applicable law;

(ii) Fiduciary assets are properly safeguarded; and

(iii) Transactions are accurately recorded in appropriate accounts in a timely manner.

(2) An audit must be conducted in accordance with generally accepted standards for attestation engagements and other standards established by the OTS.

(3) An audit may be conducted by internal auditors, external auditors or other qualified persons who are responsible only to the board of directors.

(d) *Fiduciary audit committee.* A Federal savings association's fiduciary audit committee must consist of a committee of the association's directors or an audit committee of an affiliate of the association. The committee:

(1) May not include any officers of the association or an affiliate who participate significantly in the administration of the association's fiduciary activities; and

(2) Must consist of a majority of members who are not members of any committee to which the board of directors has delegated power to manage and control the fiduciary activities of the association.

§ 550.10 Fiduciary funds awaiting investment or distribution.

(a) *In general.* With respect to a fiduciary account for which a Federal savings association has investment discretion or discretion over distributions, the association may not allow funds awaiting investment or distribution to remain uninvested and undistributed any longer than is reasonable for the proper management of the account and consistent with applicable law. With respect to a fiduciary account for which a Federal savings association has investment discretion, the association must obtain for funds awaiting investment or distribution a rate of return that is consistent with applicable law.

(b) *Self-deposits*—(1) *In general.* A Federal savings association may deposit funds of a fiduciary account that are awaiting investment or distribution in the commercial, savings, or another department of the association, unless prohibited by applicable law. To the extent that the funds are not insured by the FDIC, the association must set aside collateral as security, under the control of appropriate fiduciary officers and employees, in accordance with paragraph (b)(2) of this section. The market value of the collateral set aside must at all times equal or exceed the amount of the uninsured fiduciary funds.

(2) *Acceptable collateral.* A Federal savings association may satisfy the collateral requirement of paragraph (b)(1) of this section with any of the following:

(i) Direct obligations of the United States, or other obligations fully guaranteed by the United States as to principal and interest;

(ii) Readily marketable securities of the classes in which State-chartered corporate fiduciaries are permitted to invest fiduciary funds under applicable state law;

(iii) Other readily marketable securities as the OTS may determine;

(iv) Surety bonds, to the extent they provide adequate security, unless prohibited by applicable law; and

(v) Any other assets that qualify under applicable State law as appropriate security for deposits of fiduciary funds.

(c) *Affiliate deposits.* A Federal savings association, acting in its fiduciary capacity, may deposit funds of a fiduciary account that are awaiting investment or distribution with an affiliated insured depository institution, unless prohibited by applicable law. A Federal savings association must set aside collateral consistent with the requirements of paragraph (b)(2) of this section, as security for a deposit by or with an affiliate of fiduciary funds awaiting investment or distribution, unless prohibited by applicable law.

§ 550.11 Investment of fiduciary funds.

A Federal savings association must invest funds of a fiduciary account in a manner consistent with applicable law.

§ 550.12 Collective investment funds.

(a) *In general.* Where consistent with applicable law, a Federal savings association may invest assets that it holds as fiduciary in the following collective investment funds:[1]

(1) A fund maintained by the association, or by one or more affiliated depository institutions[2] exclusively for the collective investment and reinvestment of money contributed to the fund by the association, or by one or more affiliated depository institutions, in its capacity as trustee, executor, administrator, guardian, or custodian under a uniform gifts to minors act.

(2) A fund consisting solely of assets of retirement, pension, profit sharing, stock bonus, or other trusts that are exempt from Federal income tax.

[1] In determining whether investing fiduciary assets in a collective investment fund is proper, the Federal savings association may consider the fund as a whole and, for example, shall not be prohibited from making that investment because any particular asset is non-income producing.

[2] A fund established pursuant to this paragraph (a)(1) that includes money contributed by entities that are affiliates as defined in § 550.2, but are not members of the same affiliated group as defined at 26 U.S.C. 1504, may fail to qualify for tax-exempt status under the Internal Revenue Code. *See* 26 U.S.C. 584.

(i) A Federal savings association may invest assets of retirement, pension, profit sharing, stock bonus or other trusts that are exempt from Federal income tax and that the association holds in its capacity as trustee in a collective investment fund established under paragraph (a)(1) or (a)(2) of this section.

(ii) A Federal savings association may invest assets of retirement, pension, profit sharing, stock bonus, or other employee benefit trusts that are exempt from Federal income tax and that the association holds in any capacity (including agent), in a collective investment fund established under this paragraph (a)(2) if the fund itself qualifies for exemption from Federal income tax.

(3) Other collective investments authorized for national banks under 12 CFR 9.18.

(b) *Requirements.* Collective investment funds held by a Federal savings association under paragraph (a) of this section must be administered in accordance with 12 CFR 9.18. Any document required to be filed with the Comptroller of the Currency under 12 CFR 9.18 must also be filed with the OTS in accordance with the filing instructions in § 516.1(c) of this chapter. The OTS may review such documents for compliance with this part and other laws and regulations.

§ 550.13 Self-dealing and conflict of interest.

(a) *Investments for fiduciary accounts*—(1) *In general.* Unless authorized by applicable law, a Federal savings association may not invest funds of a fiduciary account for which an association has investment discretion in the stock or obligations of, or in assets acquired from the association or any of its directors, officers, or employees; affiliates of the association or any of their directors, officers, or employees; or individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the association.

(2) *Additional securities investments.* If retention of stock or obligations of the association or its affiliates is consistent with applicable law, the association may:

(i) Exercise rights to purchase additional stock (or securities convertible into additional stock) when offered pro rata to stockholders; and

(ii) Purchase fractional shares to complement fractional shares acquired through the exercise of rights or the receipt of a stock dividend resulting in fractional share holdings.

(b) *Loans, sales, or other transfers from fiduciary accounts*—(1) *In general.* A Federal savings association may not lend, sell, or otherwise transfer assets of a fiduciary account for which the association has investment discretion to the association or any of its directors, officers, or employees, or to affiliates of the association or any of their directors, officers, or employees, or to individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the association, unless:

(i) The transaction is authorized by applicable law;

(ii) Legal counsel advises the association in writing that the association has incurred, in its fiduciary capacity, a contingent or potential liability, in which case the association, upon the sale or transfer of assets, must reimburse the fiduciary account in cash at the greater of book or market value of the assets;

(iii) As provided in 12 CFR 9.18 for defaulted fixed-income investments; or

(iv) Required in writing by the OTS.

(2) *Loans of funds held in trust.* Notwithstanding paragraph (b)(1) of this section, a Federal savings association may not lend to any of its directors, officers, or employees any funds held in trust, except with respect to employee benefit plans in accordance with the exemptions found at section 408 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108).

(c) *Loans to fiduciary accounts.* A Federal savings association may make a loan to a fiduciary account and may hold a security interest in assets of the account if the transaction is fair to the account and is not prohibited by applicable law.

(d) *Sales between fiduciary accounts.* A Federal savings association may sell assets between any of its fiduciary accounts if the transaction is fair to both accounts and is not prohibited by applicable law.

(e) *Loans between fiduciary accounts.* A Federal savings association may make a loan between any of its fiduciary accounts if the transaction is fair to both accounts and is not prohibited by applicable law.

§ 550.14 Custody of fiduciary funds.

(a) *Control of fiduciary assets.* A Federal savings association must place assets of fiduciary accounts in the joint custody or control of not fewer than two of the fiduciary officers or employees designated for that purpose by the board of directors. A Federal savings association may maintain the investments of a fiduciary account off-premises, if consistent with applicable law and if the association maintains adequate safeguards and controls.

(b) *Separation of fiduciary assets.* A Federal savings association must keep the assets of fiduciary accounts separate from the assets of the association. A Federal savings association must keep the assets of each fiduciary account separate from all other accounts or must identify the investments as the property of a particular account, except as provided in § 550.12.

§ 550.15 Deposit of securities with State authorities.

(a) *In general.* If the law of the State in which the Federal savings association is located requires corporations acting in a fiduciary capacity to deposit securities with State authorities for the protection of private or court trusts, then a Federal savings association that acts as a private or court-appointed trustee must make such a deposit with that State. If the State authorities refuse to accept the deposit, the association must deposit the securities with the Federal Home Loan Bank of which the Federal savings association is a member, to be held for the protection of private or court trusts to the same extent as if the securities had been deposited with State authorities.

(b) *Assets held in more than one State.* If a Federal savings association administers trust assets in more than one State, the association may compute the amount of deposit required for each State on the basis of trust assets that the association administers primarily from offices located in that State.

§ 550.16 Fiduciary compensation.

(a) *Compensation of association.* If the amount of a Federal savings association's compensation for acting in a fiduciary capacity is not set or governed by applicable law, the association may charge a reasonable fee for its services.

(b) *Compensation of co-fiduciary officers and employees.* A Federal savings association may not permit any officer or employee to retain any compensation for acting as a co-fiduciary with the association in the administration of a fiduciary account, except with the specific approval of the association's board of directors.

(c) *Bequests or gifts to trust officers and employees.* A Federal savings association may not permit any fiduciary officer or employee to accept a bequest or gift of fiduciary assets, unless the bequest or gift is directed or made by a relative of the officer or employee or is specifically approved by the association's board of directors.

§ 550.17 Receivership or voluntary liquidation.

If the OTS appoints a conservator or receiver for a Federal savings association under part 558 of this chapter, or if a Federal savings association places itself in voluntary liquidation, the receiver, conservator, or liquidating agent must promptly close or transfer to a substitute fiduciary, all fiduciary accounts, in accordance with OTS instructions and the orders of the court having jurisdiction.

§ 550.18 Surrender of fiduciary powers.

(a) *Filing of board resolution.* A Federal savings association seeking to surrender its fiduciary powers must file with the OTS a certified copy of the resolution of its board of directors evidencing that intent. The resolution must be filed in accordance with § 516.1 of this chapter.

(b) *Issuance of OTS notice.* If, after appropriate investigation, the Regional Director is satisfied that the Federal savings association has been discharged from all fiduciary duties, the Regional Director will issue a written notice to the association indicating that the association is no longer authorized to exercise fiduciary powers.

(c) *Recovery of securities deposited with State authorities.* Upon issuance of the OTS written notice, the Federal savings association may recover any securities deposited under § 550.15.

§ 550.19 Revocation of fiduciary powers.

(a) *Revocation standards.* The OTS may revoke a Federal savings association's authority to exercise fiduciary powers under this part, if the OTS determines that the association:

(1) Has unlawfully or unsoundly exercised those fiduciary powers;

(2) Has failed to exercise those fiduciary powers for five consecutive years; or

(3) Has otherwise failed to comply with the requirements of this part.

(b) *Revocation procedures.* Revocation procedures are set forth in 12 U.S.C. 1464(n)(10). The hearing required under 12 U.S.C. 1464(n)(10)(B) will be conducted in accordance with part 509 of this chapter.

PART 563e—COMMUNITY REINVESTMENT

4. The authority citation for part 563e continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1814, 1816, 1828(c) and 2901 through 2907.

5. Section 563e.11 is amended by revising paragraph (c) to read as follows:

§ 563e.11 Authority, purposes and scope.

* * * * *

(c) *Scope*—(1) *General.* This part applies to all savings associations except as provided in paragraph (c)(2) of this section.

(2) *Certain special purpose savings associations.* This part does not apply to special purpose savings associations that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incident to their specialized operations. These associations include banker's banks, as defined in 12 U.S.C. 24 (Seventh), and associations that engage only in one or more of the following activities: providing cash management controlled disbursement services or serving as correspondent associations, trust companies or clearing agents.

Dated: July 14, 1997.

By the Office of Thrift Supervision.

Nicolas P. Retsinas,

Director.

[FR Doc. 97–19157 Filed 7–22–97; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–CE–28–AD]

Airworthiness Directives; Cessna Aircraft Company Models 402C and 414A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD) that would have superseded AD 85–13–03 R2, which currently requires repetitively inspecting the engine mount beams for cracks on certain Cessna Aircraft Company (Cessna) Models 402C and 414A airplanes, and replacing any cracked beams. The earlier proposed AD would have retained the repetitive inspections initially, and would have required eventual modification of the engine mount beams upon the accumulation of a certain amount of usage time on the airplane, as terminating action for the repetitive inspections. Since publication of that proposal, the Federal Aviation Administration (FAA) has determined that the proposed action is still a valid safety issue, but that the engine mount beams should be modified for all airplanes instead of relying on repetitive inspections to detect cracks until each airplane accumulates a certain amount of usage time. This proposed AD revises the previous proposal by incorporating this change. The actions specified by the proposed AD are intended to prevent failure of the engine mount beam caused by fatigue cracks, which could result in loss of the engine with consequent loss of the airplane. Since the comment period for the original proposal has closed and the proposed AD has been changed from what was originally proposed, the FAA is allowing additional time for the public to comment.

DATES: Comments must be received on or before September 26, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–28–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277, telephone (316) 941–7550; facsimile (316) 942–9006. This information may also be examined at the FAA at the address presented above.

FOR FURTHER INFORMATION CONTACT: David L. Ostrodka, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4129; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this supplemental notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this supplemental notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 90–CE–28–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of Supplemental NPRM's

Any person may obtain a copy of this supplemental NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–28–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 85–13–03 R2, Amendment 39–5147, currently requires repetitively inspecting the engine mount beams for cracks on certain Cessna Aircraft Company (Cessna) Models 402C and 414A airplanes, and replacing any cracked beams. On August 9, 1990 (55 FR 32442), a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would supersede AD 85–13–03 R2 was published in the **Federal Register** as a notice of proposed rulemaking (NPRM). This NPRM proposed to supersede AD 85–13–03 R2 with a new AD that would have retained the repetitive inspections initially, and would have required eventual modification of the engine mount beams upon the accumulation of a certain amount of usage time on the airplane, as terminating action for the repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received regarding the proposed rule and no comments were received regarding the FAA's determination of the cost to the public.

Comment Disposition

Cessna recommends a change to the NPRM to account for airplanes that may have Cessna Kit SK414–19 incorporated without Cessna Kit SK414–17 ever being incorporated. Cessna states that, as currently written, the NPRM would not require the 9,600 hour time-in-service (TIS) repetitive radiographic inspections for these airplanes.